IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

Suit No.2730 of 1986

Indian Bank ..Plaintiffs

V/s

A. Thangappan ..Defendant

Mr.Anand Saiyed i/b Pandya Gandhi and Co. for Plff

None for defendants

CORAM:S.R.SATHE,J.

DATED:12th December 2005

ORAL JUDGMENT:-

1. Plaintiff has filed this suit against the defendant for recovery of amount advanced to him under 3 different credit facilities.

2. Plaintiff's case in brief is that defendant was carrying on business as a sole proprietor in the name and style of Arumuga Engineering Company. As per request of the defendant, in December 1975 plaintiff bank granted to the defendant clean supply bill purchase and documents against acceptance bill purchase facility to the extent of Rs.20,000/- and on 9-12-1975 the

defendant no.1 executed demand promissory note and other necessary documents. On 29-5-1978 plaintiff renewed the said bill purchase facility and executed necessary documents. He also executed letter of renewal on 29-5-1978 and 11-8-1978.

3. As per request of the defendant in June 1979 plaintiff bank increased sanction limit for the aforesaid bill purchase facility to the extent of Rs.60,000/- and accordingly the defendant executed necessary documents in favour of the plaintiff. The defendant did not repay the said amount and on the contrary executed letter of renewal on 27-5-1982 and 13-3-1985. The defendant also executed an agreement of hypothication dated 13-3-1985. Pursuant to the aforesaid bill purchase facilities and in consideration of documents executed by the defendant the plaintiff bank discounted and supplied bills of exchange drawn by the defendant in favour of the various parties. The said bills of exchange duly accepted by the drawee when presented for acceptance but were dishonoured when presented for payment. Plaintiff, therefore, issued notice of dishonour to the defendant. On 26-9-1986 an amount of Rs.1,84,260-15 ps was due and payable by the defendant to the plaintiff in the aforesaid facility.

4. In February 1976 as per request of the defendant, plaintiff bank had granted open cash credit facility to the extent of rs.10,000/- to him after defendant

executing necessary document in that behalf. The limit of the said facility was extended upto Rs.20,000/- on 11-8-1978. Defendant executed letter of renewal and a demand promissory note of Rs.28,505/- in favour of the plaintiff bank on 11-5-1981. However, by the end of January 1984 amount of rs.49682-29 was due from the defendant towards said facility account, hence he executed letter of renewal on 30-1-1984.

5. The third facility which was granted to the defendant was on 18-12-1978. It was VDM term loan facility. For that defendant executed demand promissory note for Rs.30,000/-. The defendant also availed the said facility but did not repay the said amount and on the contrary executed renewal letters and DP notices from time to time. In spite of repeated demands the defendants did not clear the dues in the above mentioned 3 accounts. Ultimately, on 29-9-1986 plaintiff filed the present suit for recovery of the amount of Rs.1,84,260-55 i.e. amount due to purchase facility and Rs.82,461-10 amount due from the defendant under open cash credit facility account and amount of Rs.69,185-20 due under MTL facility.

6. The defendant filed his written statement and opposed the suit claim on several grounds. Firstly, he contended that as he is residing in territorial jurisdiction of Thane district this court has no jurisdiction to try the present suit. Secondly, he

contended that the suit is barred by law of limitation. The defendant further contended that the plaintiff bank did not give due credit for the payment made by him and because of wrong tactices followed by the plaintiff bank, he suffered loss of Rs.22,000/-. According to him when he submitted a bill for Rs.11,000/- to the plaintiff bank they did not accept it. This happened on several occasions when the plaintiff bank refused to accept the bills for discounting without assigning any reasons. Whenever defendant produced cheques towards the bills the bank adjusted the said amounts either towards interest or repayment of loan and did not realise bills as a result of the same the defendant could not pay the wages of 32 workers in time and that invited further trouble. The defendant also contended that plaintiff officers' obtained his signatures on various blank documents and the amounts and dates in the said documents were filled in by the officers of the plaintiff bank subsequently and on the basis of the same they tried to recover amount from the defendant. According to the defendant letters of renewal are not legal and plaintiff bank is not entitled to rely on the same.

7. On these pleadings following issues have been framed by this Court (Coram:A.S.Aguiar,J). I have given my findings as mentioned against the same.

1. Whether the plaintiffs prove

that cause of action arose
within the Territorial jurisdiction
of this court ? Yes

2. Whether the plaintiff’s claim is
barred by law of Limitation? No
limitation?

3. Whether additional Court Fees
are payable on prayer
(b), (d) and (f)? Does not arise

4. Whether the plaintiff is entitled
to recover from
the Defendants a sum of Rs.1,84,260-55
(as on b 27-9-1986(under
the Bill Purchase facility? Yes

5. Whether the plaintiff is entitled
to recover from the
Defendant a sum of Rs.82,461-10
(as on 27-9-1986) under
the Open Cash Credit Facility? Yes

6. Whether the plaintiff’s entitled to
recover form the
Defendant a sum of Rs.69,185-20
(as on 27-9-1986) under
the Medium Term Loan? Yes

7. What further interest are payable under the 3 facilities from the date of hearing of the suit till payment/realisation? As stated below in final order.

8. From perusal of the written statement one thing is clear that defendant has not denied the allegation of the plaintiff that 3 different credit facilities as mentioned in the plaint were granted to him.Not only that but defendant has nowhere specifically contended that documents in question are not signed by him. A feeble attempt has been made by him in written statement to show that officers of the plaintiff bank obtained his signature son blank documents and the same were filled in by the plaintiff behind the back of the defendant and as such the same cannot be relied upon. Naturally, the burden was on the defendant to prove that his signatures were taken on blank documents. However, the defendant has not adduced any evidence in support of his contention. Not only that but the plaintiff's evidence has also gone unchallenged inasmuch as the defendant and his Advocate were absent when the matter was placed for hearing and cross examination of the plaintiff's witness who had filed affidavit of evidence.

9. The plaintiff's witness R. Ashok, Assistant Manager

of the plaintiff bank has filed his affidavit and has specifically stated therein that he is conversant with the facts of the suit. He has produced all necessary documents regarding the suit transaction and in particular the demand promissory notes executed by the defendant from time to time in respect of the above mentioned 3 credit facilities. He has also stated that all these documents have been signed by the defendant and he identifies his signature. Those statements of plaintiff's witness have gone totally unchallenged. There is no reason to disbelieve the same. Plaintiff has also produced the statement of defendant's account duly certified by the manager. From the perusal of the same it is very clear that the said account has been maintained in the normal course of the plaintiff's transaction, so due weightage shall have to be given to the said accounts.

10. Plaintiff's witness R.Ashok has also specifically stated that defendants executed the renewal letters from time to time. All these original letters are produced by him. From the perusal of the same it is very clear that these 3 orders from execution of the demand promissory note. First letter of renewal was executed by defendant whereby he had agreed to execute all the earlier DP note. Every renewal letter was executed within a period of 3 years from earlier execution. so, if we take into consideration the said renewal letters which are duly proved by the plaintiff's witness, it is

very clear that suit is in time.

11. Tough the defendant has contended that he is residing at Thane and as such this court has no jurisdiction to try the present suit, it is very clear that transaction in question has taken place at Sion, Bombay. The defendant was to pay the amount at Sion and as such this Court has territorial jurisdiction to try the present suit and there is no substance in the contention taken by the defendant in this behalf.

12. From the affidavit of plaintiff's witness it is very clear that the plaintiff has proved that on the date of filing of the suit amounts of Rs.1,84,260-55, Rs.82,461.10 and 69,185-20 were due from the defendant no.1 under 3 credit facilities granted to the defendant and as per the statement of account of the defendant maintained in the plaintiff's bank.

13. From the perusal of the demand promissory notes and other documents it is very clear that the plaintiff was entitled to claim interest as charged and capitalisation of interest was also permitted. Thus the plaintiff has proved the suit claim. However, having regard to the fact that principal amount was only Rs.1,10,000/- and thereafter the present claim is to the tune of Rs.3,35,906-85, that is obviously because of capitalisation of the interest, I think that it is desirable to grant interest only at the rate of Rs.12%

p.a. from the date till realisation of the amount.

. In this view of the matter, I pass the following order :

. The defendant to pay plaintiff bank Rs.3,35,906-85 ps. and future interest on Rs.1,10,000/- (principal amount under 3 cash credit facilities), at the rate of 12% p.a. from the date of the suit till realisation of the amount. The defendant to pay plaintiff the cost of this suit and bear his own.

(S.R.SATHE,J.)